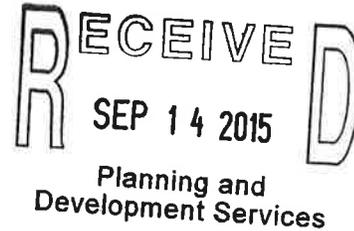




THE CITY OF SAN DIEGO

September 14, 2015

Mr. Jim Bennett, Groundwater Geologist
County of San Diego
5510 Overland Drive, Suite 310
San Diego, CA 92123



Dear Mr. Bennett:

Subject: Notice of Preparation: El Monte Sand Mining and Nature Preserve, PDS2015-MUP-98-014W2, PDS2015-RP-15-001, PDS2015-ER-98-14-016B.

We have reviewed the Notice of Preparation for an Environmental Impact Report dated August 13, 2015, and appreciate the opportunity to comment. The proposed project (Project) includes a sand mining operation to extract approximately 12 million cubic yards of mineral resources over a 15-year period with an additional four years for reclamation activities. As mining activities are completed in phases, the site will be progressively reclaimed and restored as open space with an open water pond and recreational trail easements. The size of the project is approximately 188.6 acres on a 167 acre mining footprint; 18 acres of previously excavated golf course pond that would be backfilled and the remaining acreage for haul roads and trails. The land is currently owned by the Helix Water District. The Project operations would include an aggregate processing facility, all support structures, buildings and storage containers. Water will be obtained from on-site wells and ponds once operations extend below the water table. Approximately 132 acre feet of water will be used per year. The Project is located along El Monte and Willow Roads in the El Monte Valley, in the Lakeside area, downstream of the City's El Capitan Reservoir, along the San Diego River.

The City of San Diego (City) is in agreement with the issues to be addressed in the forthcoming Subsequent Environmental Impact Report (SEIR). Additional issues to be evaluated are summarized below:

City of San Diego's Pueblo Water Rights

The SEIR should evaluate the potentially significant impact on the City's Pueblo water rights. The City possesses Pueblo rights in the San Diego Formation and the San Diego River. A Pueblo right is the "paramount" right of an American city as successor of a Spanish or Mexican pueblo to the use of water naturally occurring within the old pueblo limits for the use of the inhabitants of the city. (*Los Angeles v. Pomeroy* (1899) 124 Cal. 597; *Los Angeles v. San Fernando* (1975) 14 Cal.3d 199, 251; *Cal. Farm Bureau Federation v. State Water Resources Control Bd.* (2011) 51 Cal.4th 421.)

Public Utilities Department

525 B Street, Suite 300, MS 906 • San Diego, CA 92101-4409

Tel (619) 533-7595



This right attaches to the use of all surface and groundwaters of the streams that flowed through the original pueblo, including their tributaries, from their source to their mouth. (*San Diego v. Cuyamuca Water Co.* (1930) 209 Cal. 105, 151 (*San Diego*)). The City's Pueblo right thus attaches to the waters of the San Diego River System, including percolating groundwater that is interconnected with the San Diego River.

For any source of water to which its Pueblo right attaches, the City is entitled to take "to the extent of the needs of its inhabitants." (*Feliz v. Los Angeles* (1881) 58 Cal. 73, 80; *San Diego*, *supra*, 209 Cal. 105 at pp. 164-165.) As a Pueblo water right holder, the City thus has the highest priority right to use as much of the native flow of the San Diego River as is reasonably necessary to meet the City's present and future needs. Furthermore, the Pueblo right is superior to virtually every other right and cannot be lost. (*Ibid.*; *Los Angeles v. Glendale* (1943) 23 Cal.2d 68, 74-79.) Under the law of water rights, the County or Project developers may not take any action that affects the amount of groundwater or surface water within the San Diego River Groundwater Basin (Basin) if the effect of that action would deprive the City of its reasonable and beneficial use of the water supply guaranteed under its Pueblo right. The right allows the City to manage and control these waters for its needs, and the City intends to rely on this right to control any space in the Basin that would have recharged with native water were it not for the property owner or user's use or modification of that space.

The City is presently assessing the development potential of all its groundwater resources. While the City has no impending plans to develop this resource, it does reserve its right to consider and/or develop any and all available groundwater resources. As a consequence, no activity should be approved on the subject site that would jeopardize the City's ability to develop groundwater resources near the subject site.

Groundwater Supply, Storage, Surface Flow, and Water Quality

A thorough evaluation to disclose the Project's potentially significant groundwater effects is needed. Modeling should be done to demonstrate the effect on groundwater recharge, discharge, and surface water flows. The evaluation should include Surface Mining and Reclamation Act (SMARA) requirements for the reclamation plan in the impact and cumulative effects analysis. If results indicate the Project will have an adverse effect on water surface flows, groundwater storage, quality or quantity, including the City's future water supply pursuant to its Pueblo right, the SEIR must describe mitigation measures and alternatives to the Project capable of avoiding or substantially lessening those impacts. Potential mitigation should be evaluated and discussed with the City of San Diego.

The City is concerned that the Project's removal of more than 12 million cubic yards of sand, which is the medium that holds groundwater in the Basin, could reduce groundwater storage and recharge and degrade groundwater quality.

It is reasonable to assume that the loss of such a potentially significant amount of the water-bearing medium may substantially reduce groundwater storage and degrade water quality. To what extent could future siltation of the final ponds reduce groundwater permeability?

The Project should also address the potential to significantly adversely affect groundwater levels, which is not the same issue as the loss of storage capacity. The analysis should consider the effect on groundwater levels from operation of the mine and to biological resources including individually significant or cumulatively considerable effect on groundwater levels or storage during operations or from evaporation losses following closure and reclamation.

With regard to groundwater and surface water quality, the investigation should address the potential for groundwater and surface water degradation as a result of project operations, including pollutants from heavy earth moving equipment, vehicles, and material transport over the projected 15 years of operation. A Work Plan would be useful to assess how slurry will be used on-site and determine any groundwater impacts.

The NOP also discussed future recreational uses of the site including trails. These trails will connect with other major trails in this area and include uses by equestrians. It is unclear how additional salt and nutrient loading from increased equestrian use could affect water quality. Evaluation of this issue should include a manure and waste management plan to be implemented to reduce potential water quality impacts. Regional stormwater regulations do not address salt and nutrient loading at the level needed to fully protect drinking source water reservoirs.

Consistency with the Sustainable Groundwater Management Act (SGMA)

The SEIR should discuss the Sustainable Groundwater Management Act (SGMA) and the applicability to the Project. The SGMA requires development of groundwater sustainability plans that consider, among other things, potential effects to hydrologically connected surface waters. The San Diego River Valley Basin, where the Project would be located, is categorized as a Medium Priority Basin designated by the California Department of Water Resources, indicating it is an area of concern to the State for potential groundwater depletion and associated impacts. The City will be developing a Sustainable Groundwater Management Plan in accordance with State Law. Before deciding whether to authorize the Project, the County should evaluate and understand its potential effects on the Project's future viability.

Lastly, the City is a designated monitoring entity for the Basin for the California Statewater Groundwater Elevation Monitoring (CASGEM) program, and continues to monitor the groundwater elevations in the Basin. Therefore, if the Project is approved, the applicable permits should include that the monthly and yearly monitoring reports be submitted to the Public Utilities Department for review and comment.

Cumulative Impacts

In light of the potentially significant individual and cumulative impacts from past, present, and future mining projects within the Basin, the City requests the SEIR evaluate the potential means of avoiding or mitigating effects to the City's water supply and exercise of its Pueblo right. Assess impacts to groundwater and water quality including those from nearby projects and the loss of due to evaporation from the final ponds as described above.

Conclusion

The City is committed to protecting its groundwater resources and preserving its established Pueblo rights throughout the Basin. The City therefore insists that these significant, adverse environmental impacts be fully examined and mitigated to its satisfaction as discussed above.

Should you have any questions, please contact Principal Water Resources Specialist, George Adrian, P.E. at (619) 533-4680 or GAdrian@sandiego.gov, or Jeffery Pasek, Watershed Manager, at (619) 533-7599 or JPasek@sandiego.gov.

Sincerely,



Lan C. Wiborg
Deputy Director
Long-Range Planning & Water Resources Division

LCW/vs

- cc: Ray Palmucci, Deputy City Attorney, Office of the City Attorney
Myra Herrmann, Senior Planner, Planning Department
George Adrian, Principal Water Resources Specialist, Public Utilities Department
Jeffery Pasek, Watershed Manager, Public Utilities Department